

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FRANCES GIPSON,	)	
Plaintiff,	)	
	)	
vs.	)	1:09-cv-1316-TWP-TAB
	)	
MEIJER STORES LIMITED	)	
PARTNERSHIP, et al.,	)	
Defendants.	)	

**DISCOVERY ORDER**

Plaintiff seeks a determination of whether he must provide a written expert report under Federal Rule of Civil Procedure 26(a)(2)(B) from Dr. Paul Vessely. [Docket No. 26.] Dr. Vessely is Plaintiff's treating physician and was not retained or specifically employed to provide expert testimony in this case. [*Id.* at ¶ 6.] Defendant Kraft Foods Global, Inc. responds that an expert report is "necessary if Dr. Vessely will testify beyond his personal observations and treatment and will offer opinions on causation, prognosis, or permanency" of Plaintiff's injuries. [Docket No. 27 at 1.]

Consistent with *Wallace v. Hounshel*, No. 1:06-cv-1560-RLY-TAB, 2008 WL 2704714 (S.D. Ind. July 3, 2008), Plaintiff need not produce a written report from Dr. Vessely. However, failure to provide an expert report leaves open the possibility that the trial judge may limit Dr. Vessely's testimony to the detriment of Plaintiff's case. *Id.* at \*3; see also *Martin v. CSX Transp., Inc.*, 215 F.R.D. 554, 557 n.3 (S.D. Ind. 2003) ("The safest (though perhaps not the most cost effective) approach for counsel seeking to elicit trial testimony from a treating physician that strays from the core of that treatment is to produce an expert report."). Plaintiff's motion for a determination of whether he must provide a Rule 26(a)(2)(B) report [Docket No.

26] is granted consistent with this order.<sup>1</sup>

Dated: 08/23/2010

7-131

Tim A. Baker  
United States Magistrate Judge  
Southern District of Indiana

Copies to:

Deanna A. Dean-Webster  
DEAN-WEBSTER, WRIGHT & KITE, LLP  
dean@dwwklaw.com

John Richard Helm  
SCHRECKENGAST & HELM  
jrhlaw@sbcglobal.net

Matthew Reed King  
FROST BROWN TODD LLC  
mking@fbtlaw.com

Daniel M. Long  
FROST BROWN TODD LLC  
danlong@fbtlaw.com

---

<sup>1</sup>Interestingly, just four days before Kraft's response in this case, an attorney from Kraft's counsel's law firm made the opposite argument that a party is not obligated to provide an expert report for an expert not retained to provide expert testimony at trial. *Dali Assocs. L.P. v. Ind. Sports Corp.*, 1:09-cv-663-RLY-TAB [Docket No. 33]. The outcome reached here is consistent with this Court's ruling in *Dali*.